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610357—44

In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 423

UNITED STATES EX REL. ROBERT E. LEE JORDAN, PETITIONER

v.

HAROLD L. ICKES, SECRETARY OF THE INTERIOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinions of the District Court (R. 21–24) and the Court of Appeals (R. 35–35A) have not yet been reported.

JURISDICTION

The judgment of the Court of Appeals was entered June 5, 1944 (R. 35). The petition for a writ of certiorari was filed September 2, 1944. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the Secretary of the Interior may be compelled to grant or to act upon the petitioner's applications for oil and gas leases under Section 17 of the Mineral Leasing Act.

STATUTE INVOLVED

Section 17 of the Mineral Leasing Act, as amended by the Act of August 21, 1935, c. 599, 49 Stat. 674, 676–677 (30 U. S. C. 226), provides:

> All lands subject to disposition under this Act which are known or believed to contain oil or gas deposits, except as herein otherwise provided, may be leased by the Secretary of the Interior * * * to the highest responsible qualified bidder by competitive bidding under general regulations. * * *
>
> * * * * *
>
> *Provided further,* That the person first making application for the lease of any lands not within any known geologic structure of a producing oil or gas field who is qualified to hold a lease under this Act * * * shall be entitled to a preference right over others to a lease of such lands without competitive bidding * * *.

STATEMENT

The complaint alleges, in substance, as follows: On April 6, 1937, the petitioner filed in the General Land Office at Los Angeles two applications

for oil and gas leases upon submerged lands off the west coast of California. On June 8, 1937, the General Land Office rejected these applications on the ground that the Department of the Interior was without jurisdiction to grant them. Since August 6, 1937, the petitioner has persistently and unsuccessfully urged the Secretary of the Interior to take action thereon (R. 1–4). The complaint prays for a declaration that the submerged lands are owned by the United States and within the jurisdiction of the Secretary of the Interior for purposes of granting oil and gas leases under the Mineral Leasing Act; and for issuance of a writ directing the Secretary of the Interior to act upon and grant the leases applied for (R. 4–5).

The Secretary moved for summary judgment, alleging that he had suspended action on the applications pending legislative action and judicial determination with respect to the title and jurisdiction of the United States over the submerged lands (R. 18–19). The District Court granted the motion (R. 25), and the petitioner appealed to the Court of Appeals for the District of Columbia (R. 29). Prior to decision by the Court of Appeals, the petitioner unsuccessfully applied to this Court for a writ of certiorari. 320 U. S. 801. The Court of Appeals thereafter affirmed the judgment of the District Court (R. 36).

ARGUMENT

The courts below correctly held that the issuance of oil and gas leases on public lands has been confided by Congress to the discretion of the Secretary, and that the courts cannot compel him to act where his conduct is not shown to be arbitrary or unjust. *Dunn* v. *Ickes,* 115 F. (2d) 36 (App. D. C.), certiorari denied, 311 U. S. 698; *United States* v. *Ickes,* 101 F. (2d) 248 (App. D. C.); *Doehler Metal Furniture Co.* v. *Warren,* 129 F. (2d) 43 (App. D. C.), certiorari denied, 317 U. S. 663; cf. *Perkins* v. *Lukens Steel Co.,* 310 U. S. 113; *United States ex rel. McLennan* v. *Wilbur,* 283 U. S. 414. Interference by the courts is equally unwarranted, whether the relief sought is a writ of mandamus or, as here, a declaratory judgment. *Doehler Metal Furniture Co.* v. *Warren, supra;* cf. *Great Lakes Co.* v. *Huffman,* 319 U. S. 293.

CONCLUSION

The decision below is clearly correct, and there is no occasion for further review.

Respectfully submitted.

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SEPTEMBER 1944.

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